

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

5.05 Violence in the Workplace

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I. Background

Violence in the workplace is a major contributor to occupational fatalities and injuries. From 1992-1996, an average of 11 Washington workers died each year as a result of workplace homicide, and from 1992-1995 there was an annual average of 2,529 industrial insurance claims for assault and violence-related incidents. Recent years have shown some reduction in the number and rates of violence-related injuries, but homicide remains the second highest cause of workplace fatalities nationally and the fourth highest in Washington state. Homicides are the number one cause of workplace fatalities for women. During 1990-92, 41 of every 100,000 taxicab drivers in the nation and 8 of every 100,000 liquor store employees were victims of work-related homicide. Washington's unique Late-Night Retail Crime Prevention Standard appears to have prompted a reduction in violent crimes within its scope, but that scope is itself limited to a selected group of retail businesses.

Although there is a degree of uncertainty, workplace violence is not entirely random and unpredictable. In fact, there are clear patterns. A review of 1992-1995 Washington State Fund data on injuries related to workplace violence reveals the following Washington industries at the highest risk:

*Industry	<u>Claims Rate per 10,000 Workers</u>				
	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>Average</u>
1. Psychiatric Hospitals (SIC 8063)	842	893	1016	880	908
2. Residential Care (SIC 8361)	573	544	501	338	489
3. Skilled Nursing Care (SIC 8051)	286	324	286	256	288
4. Nursing/Personal Care (SIC 8059)	236	201	221	164	206
5. Job Training Services (SIC 8331)	113	101	140	170	131
6. Detective & Armored Car Services (SIC 7381)	145	120	112	101	120
7. Police Protection (SIC 9221)	136	58	99	65	90
8. Social & Manpower Program Admin (SIC 9441)	57	63	121	110	88
9. Correctional Institutions (SIC 9223)	68	100	60	62	73
10. Rooming & Boarding Houses (SIC 7021)	71	65	72	59	67
11. General Medical/Surgical Hospitals (SIC 8062)	66	72	73	54	66
12. Child Day Care Services (SIC 8351)	72	49	56	60	59

<u>*Industry</u>	<u>Claims Rate per 10,000 Workers</u>				
	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>Average</u>
13. Specialty Outpatient Clinics (SIC 8093)	42	57	73	62	59
14. Membership Organizations (n.e.c.) (SIC 8699)	46	63	28	68	51
15. Drinking Places (SIC 5813)	61	37	42	53	48
16. General Government (n.e.c.) (SIC 9199)	56	50	40	40	47
17. Home Health Care Services (SIC 8082)	42	24	62	53	45
18. Elementary & Secondary Schools (SIC 8211)	35	44	36	39	39
19. Apartment Building Operators (SIC 6513)	35	36	27	36	34

**The industries above had more than 10 State Fund injury claims related to workplace violence, 100 or more full-time employees per year, and at least twice the 1995 average overall rate of 17 such claims per 10,000 workers. All claims are included, whether or not they involved time-loss.*

National data on industries at highest risk for fatalities related to workplace violence show the following industry groups:

<u>*Industry (All States)</u>	<u>Fatality Rate per 100,000 Workers</u>	
	<u>1980-89</u>	<u>1990-92</u>
Taxicab Service	26.9	41.4
Liquor Stores	8.0	7.5
Gasoline Stations	5.6	4.8
Detective and Protective Services	5.0	7.0
Justice, Public Order and Safety	3.4	2.2
Grocery Stores	3.2	3.8
Jewelry Stores	3.2	4.7

** National industry groups with at least twice the average U.S. workplace violence fatality rate of 0.7 per 100,000 workers (from NIOSH Current Intelligence Bulletin 57, June 1996).*

Research has repeatedly identified factors associated with incidents of workplace homicide or assault. Based on its analysis of the various research, the National Institute for Occupational Safety and Health (NIOSH) has suggested that the following factors, when placed in combination with other conditions, *may* require attention in some industries (whether these factors in fact suggest a level of workplace exposure to violence that requires employer intervention depends upon a combination of circumstances specific to the individual employer or worksite):

- * Contact with public;
- * Exchange of money;
- * Delivery of passengers, goods, or services;
- * Having a mobile workplace such as a taxicab or police cruiser;

- * Working with unstable or volatile persons in health care, social services, or criminal justice settings;
- * Working alone (working in isolation) or in very small numbers;
- * Working late at night or early morning hours;
- * Working in high-crime areas;

- * Guarding valuable property or possessions;
- * Working in community-based settings.

(from NIOSH Current Intelligence Bulletin 57, June 1996)

II. Scope and Application

This WISHA Regional Directive, which will remain in effect indefinitely, applies whenever WISHA consultation or compliance staff encounter hazards related to violence in the workplace.

This directive provides guidance to WISHA staff in applying *existing* standards to issues of workplace violence. It does not (and, indeed, cannot) create any obligations for employers not found in existing WAC standards.

III. Interpretive Guidance

What existing standards can be used to address hazards related to violence in the workplace?

Several existing provisions of the Washington Administrative Code (WAC) may apply to the hazards of violence in the workplace, including (but not necessarily limited to) the following:

WAC 296-24-10203, the "Late Night Retail Workers Crime Protection Standard," provides specific violence-related direction to retail businesses that operate between 11:00 p.m. and 6:00 a.m. Restaurants, hotels, taverns, and lodging facilities are beyond the scope of this rule.

WAC 296-24-020(1) requires employers "to establish, supervise, and enforce in a manner which is effective in practice" both a "safe and healthful working environment" and "an accident prevention program as required by these standards."

WAC 296-24-040 requires employers to "develop a formal [written] accident-prevention program, tailored to the needs of the particular plant or operation and to the type of hazards involved." The program must include "a safety orientation program" (WAC 296-24-040(1)(a)) that contains (among other things) information about reporting injuries and unsafe conditions, the use and care of personal protective equipment, and emergency procedures.

WAC 296-24-073(1) requires employers "to furnish to each employee a place of employment free from recognized hazards that are causing or likely to cause serious injury or death" to employees. WAC 296-24-073(2) requires employers "to adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe" and to "do every other thing reasonably necessary to protect the life and safety of employees."

WAC 296-24-07501(2) requires employers "to assess the workplace to determine if hazards are present, or likely to be present, which necessitate the use of personal protective equipment (PPE)" and to select appropriate PPE and require its use.

WAC 296-27-030 requires employers to maintain records of occupational injuries and illnesses.

IV. Special Inspection Protocols

A. How must the WISHA Compliance Supervisor handle complaints related to violence in the workplace?

Each WISHA Compliance Supervisor must evaluate any complaints alleging a workplace security hazard according to the applicable guidance in Chapter I-C of the WISHA Compliance Manual.

B. How must a WISHA Compliance Supervisor handle reported fatalities resulting from workplace violence?

In the event of a workplace fatality resulting from violence, the supervisor must assign a Compliance Safety and Health Officer (CSHO) with experience appropriate to the situation. The CSHO must take special care not to interfere with any law enforcement activities. He or she must limit the investigation to the questions of whether the employer complied with applicable WISHA requirements, whether any violation of such requirements contributed to the incident, and whether a change in the standards could deal with such situations more effectively.

C. How must compliance staff handle employers subject to the late-night retail crime prevention standard?

CSHOs must evaluate compliance with WAC 296-24-10203 when inspecting late-night retail employers subject to those requirements and issue citations as appropriate under the standard. If the requirements of the late-night retail standard are met by employers subject to the standard, CSHOs must not use the APP standard to impose more stringent requirements to address the same hazards.

D. How should compliance staff conduct inspections related to workplace violence hazards?

In evaluating an employer's compliance with existing obligations under the accident prevention program standard (WAC 296-24-040) as they relate to workplace violence, CSHOs must follow these inspection procedures:

1. The CSHO must be alert to the presence of factors that *may* be associated with an increased risk of workplace violence, especially when inspecting an employer within an industry with a high rate of workplace violence injuries or fatalities. The presence of one or more such factors, including those acknowledged by NIOSH (see background section, above) may not be significant in itself. The CSHO must consider the overall environment to determine whether the potential hazards pose a credible threat of physical injury.

2. When reviewing injury records and conducting interviews of employers, employees and their representatives, the CSHO must be alert to patterns of workplace violence incidents.
3. The CSHO also must review the employer's written accident prevention program to determine whether it addresses any hazards identified by the CSHO.

- a. If the APP does not address such hazards, then the CSHO must evaluate whether the employer was or clearly should have been aware of the hazard. If so, the CSHO must issue the appropriate violation under WAC 296-24-040 or the equivalent vertical standard. If not, the CSHO must provide an appropriate advisory "message" on the citation and notice giving the employer the necessary guidance, rather than issuing a "violation" under WISHA.
- b. If the APP addresses such hazards but is *clearly* insufficient, the CSHO must issue the appropriate violation under WAC 296-24-040 or the equivalent vertical standard (use of such a test does not allow the CSHO merely to substitute his or her judgment for the employer's with regard to either the extent of hazard or the method of abatement; rather, considerable deference must be paid to employer's analysis of the hazard and its appropriate abatement).

APP violations related to workplace violence and based on a determination that the APP is insufficient must be issued only after consultation with the Office of the Attorney General and with WISHA Policy & Technical Services.

- c. If the employer effectively addresses such hazards in employee handbooks or other written materials (and if the guidance found in the handbooks or other materials has actually been put into effect by the employer) other than the APP, any APP violation must be treated as *de minimis* and therefore not cited.
 - d. All accident prevention program citations related to workplace violence shall be cited general until at least July 1, 1998. At that time, the accumulated data will be used to reevaluate this classification policy.
4. If the APP sufficiently addresses existing workplace violence hazards but is not enforced, the CSHO may issue a violation of WAC 296-24-020(2) as appropriate. Such violations must be issued only after consultation with the Office of the Attorney General and with WISHA Policy & Technical Services.
- E. When should compliance staff apply the "safe place" standard to workplace violence hazards?

Safe place citations under WAC 296-24-073 (or the equivalent requirement in a vertical standard) must be issued only if no specific standard applies and are subject to the guidance in the WISHA Compliance Manual (Section IV-10.B.2). This detailed guidance describes the appropriate approach in determining the presence of the following four elements of any safe place citation: 1) the employer must have failed to keep the workplace free of a hazard to which employees of that employer were exposed; 2) the hazard must be recognized by the

employer, by the industry, or by "common sense;" 3) the hazard must be causing or likely to cause death or serious physical harm; and 4) there was a feasible and useful method to correct the hazard.

CSHOs attempting to determine if a particular workplace violence hazard is "recognized" must pay particular attention to the guidance in the WISHA Compliance Manual to determine whether the hazard is recognized and could therefore have been reasonably anticipated by the employer.

Safe place violations related to workplace violence must be issued only after consultation with the Office of the Attorney General and with WISHA Policy & Technical Services.

F. What about personal protective equipment?

If personal protective equipment (PPE) would be an appropriate response to any identified hazards, the CSHO must determine whether the employer performed an analysis of hazards that might necessitate the use of PPE, as required by the PPE standard (WAC 296-24-075). If the hazard is recognized and no such analysis has been performed, the CSHO must issue the appropriate citation under WAC 296-24-07501(2). If the employer has performed the required analysis, the CSHO must determine whether the decisions resulting from the analysis were reasonable (use of such a test does not allow the CSHO merely to substitute his or her judgment for the employer's with regard to the hazard and its appropriate abatement).

PPE violations related to workplace violence must be issued only after consultation with the Office of the Attorney General and with WISHA Policy & Technical Services.

G. What relationship do voluntary L&I guidelines have to workplace violence inspection activities?

Voluntary workplace violence guidelines issued by L&I may not be used as a basis for citation, nor may such guidelines be used to demonstrate an employer's knowledge of a hazard for enforcement purposes.

H. How should CSHOs code workplace violence inspections for purposes of tracking and future data analysis?

All inspections where workplace violence issues are reviewed, whether cited or not, must be coded "17-S Workplace Violence" in box 42 on the WISHA 1 form. All consultations where workplace violence issues were reviewed must be coded "P 03 Workplace Violence" in box 34 on the State Visit Report, Consultation-30 Form.

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